

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
WRIT PETITION NO. 4406 OF 2005**

Bakhtawarbaba Trust and anr.

... Petitioners

Versus

Nasirkhan Fazalkhan and Ors.

... Respondents

Mr. R.S. Apte with Mr. A.A. Garge for Petitioner.
Mr. Y.D. Mulani, A.G.P. for Respondent No. 5.
Mr. H.A. Solkar for Respondent Nos. 1 to 3.
Mr. A.R. Shaikh for Respondent No. 4.

**CORAM : F.I. REBELLO &
DR. D.Y. CHANDRACHUD, JJ.
DATED : 6TH SEPTEMBER, 2005**

P.C.

. Section 36 of the Waqf Act 1995, sets out the procedure by which an application has to be made for registration of the Waqf. In the instant case, the Petitioner challenges the registration of the Waqf. It is the contention of the Petitioner that the registration was effected without notice to them or without hearing them. Respondent contests the same.

. Section 36(7) of the Act contemplates that on receipt of the application for registration, the board before registration of the Waqf makes such enquiries as it thinks fit in respect of the genuineness and validity of the application and the correctness of any particulars therein. It is only after that an order is to be passed registering the Waqf. Under Section 83(2) of the Act, the person aggrieved can prefer an appeal before the tribunal constituted by the State Government in respect of any order made under this Act. The order of registration was an order made under the Act.

. A learned Division Bench of this court in Writ Petition No. 9802 of 2004 disposed of on 20.4.2005 has noted that the State Government has constituted a tribunal and the said tribunal is functioning at Aurangabad.

. Considering that, petitioner has a statutory remedy by way of appeal where he can raise all issues which he had raised herein. It will not be appropriate for this court to interfere in its exercise of its extra ordinary jurisdiction. In the light of that, petition dismissed with liberty to the petitioner to avail of such remedy in law which he is entitled to. On behalf of the respondents, learned counsel make a statement that if the Petitioner files an appeal within six weeks from today, they will not raise any objection that the appeal is barred by limitation and will proceed to argue the matter on merits. Statement accepted.

(F.I. REBELLO,J.)

(DR. D.Y. CHANDRACHUD,J.)